

**OFFICE OF THE ATTORNEY GENERAL OF TEXAS****AUSTIN****GERALD C. MANN**
ATTORNEY GENERAL

Honorable Harvey Shell, Chairman
Legislative Game and Fish Committee
House of Representatives
Austin, Texas

Dear Sir:

Opinion No. 0-3168

Re: Non-resident fishing licenses..

Your request for an opinion on the above subject has been received and carefully considered by this department. Our policy in matters of this nature is to decline to rule for a Legislative Committee on matters not before the Committee. However, we presume, that the purpose of your request is to determine for the Committee the question of whether or not legislation is necessary to effect the exemptions concerning which you inquire. We quote from your request as follows:

"A few years ago the Legislature passed a non-resident fishing license bill, which naturally applies to everyone not a bona-fide resident of the State of Texas. For a long time our Coastal Director by request of the Chambers of Commerce on the Coast, made no effort to enforce the collection of this \$5.00 license, taking the position that people from Kansas, Oklahoma, and other States who had travelled that far to fish in the Gulf of Mexico were entitled to fish without further expenses. The coast people feel that the tourist business is one of the three top industries bringing outside money into this State, and that this law and the enforcement of it which is being enforced now under our new Director of the Coastal Division is causing lots of tourists to stay clear of the Texas Coast.

"Now, inasmuch as there is something like 30,000 non-resident soldiers drawing a very meager salary, even as low as \$21.00 a month,

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who are on our Coast for temporary training to protect our country if and when we should get into War, and no provision is made in the present Law exempting anyone, I am requesting your formal opinion on whether or not these soldiers should pay this \$5.00 license to enjoy about the only recreation that is available to them."

Article 4032a, Vernon's Annotated Texas Civil Statutes, reads as follows:

"Sec. 1. No person who is a non-resident of Texas, or who is an alien, shall fish in the waters of this State without first having procured from the Game, Fish and Oyster Commission of Texas, or a Deputy Game Warden thereof, or from a County Clerk in Texas, or other legally authorized agent, a license to fish; and no person who is a resident of this State shall fish with artificial lures of any kind in the waters of this State without first having procured from the Game, Fish and Oyster Commission, or a Deputy thereof, or from a County Clerk in Texas, or other legally authorized agent, a license to fish.

"Sec. 2. Any officer, deputy or legally authorized agent, issuing any license to fish under the provisions of this Act, shall collect from the person to whom the license is issued the following fees:

"(1) If issued to a resident, the sum of One Dollar and Ten Cents (\$1.10), of which amount he shall retain as his fee Ten (10¢) Cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner on or before the 10th day of the month next succeeding that during which said license was issued.

"(2) If issued to a non-resident or an alien, the sum of Five Dollars (\$5.00), of which amount he shall retain as his fee

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Twenty Five (25¢) Cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as required under subdivision One (1) of this section; provided that he may issue to such nonresident a license good for only five (5) days, including the day of issuance, upon payment by the licensee of One Dollar and Ten Cents (\$1.10), of which amount the officer so issuing said license shall retain as his fee Ten (10) Cents, and the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as provided for in subdivision One (1) of this section.

"The officer issuing such license shall keep a complete and correct record of each fishing license issued, showing the name and place of residence of each licensee and the serial number and date of issuance of said license, on such form as the Game, Fish and Oyster Commissioner may prescribe; and the stubs of such licenses and the record thereof shall belong to the State of Texas and shall be filed with said Commissioner as and when he may direct.

"The licenses provided for herein shall entitle the holder thereof to fish in the waters described in this Act until and including August 31st next succeeding the date of issuance thereof, except that the five (5) days license shall be good only for the five days from and including the day of the issuance thereof; and every license issued under the provisions of this Act shall contain; the true date of issuance thereof, the name of licensee, his age, height, weight, color of hair, color of eyes, county of residence, if a resident of Texas, State or County of residence, if a nonresident of Texas or an alien, and such other information as the Commissioner may deem advisable to require, and the licensee shall sign upon said license a pledge to obey the laws of Texas as to fishing.

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"Sec. 3. Any person required under the provisions of this Act to procure a license to fish, who shall fish in, or who shall take by any means fish, oysters, shrimp or other marine life in any of the waters of this State in violation of the provisions of this Act without first procuring such license, or who shall fail or refuse, on demand by any officer, to show such officer his fishing license required of him by this Act, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than Ten (\$10.00) Dollars nor more than One Hundred (\$100.00) Dollars; provided, the provisions of this Act shall not apply to a resident citizen of Texas who holds a license for commercial fishing under Article 4032 of the Revised Civil Statutes of Texas, of 1925, so long as he does only commercial fishing.

"Sec. 4. By the term non-resident, as used in this Act, shall be meant any citizen of the United States of America who is not a citizen of the State of Texas, who has continuously for four months next preceding the issuance of the fishing license to him been an actual bona fide resident of the State of Texas.

"Sec. 5. All funds obtained from the sale of the licenses provided herein, after the payment of the fees allowed under this Act, shall be deposited by the Game, Fish and Oyster Commissioner in a special fund to be known as the Special Fish Propagation and Protection Fund; and this fund shall be used for the purpose of building and maintaining fish hatcheries, fairly distributed over the State of Texas and for the propagation, distribution and protection of fish in the State of Texas."

The above statute passed by the 40th Legislature of Texas clearly applies to all non-residents.

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Article 1, Section 28, of our State Constitution,
reads as follows:

"No power of suspending laws in this State
shall be exercised except by the Legislature."

You are therefore respectfully advised that it is
the opinion of this department that since the Legislature has
seen fit to require a license of non-residents, no officer or
agency of the executive or judicial branches possesses power
to suspend the enforcement of such law.

Whether such law should be repealed is a question
addressing itself peculiarly and exclusively to the Legis-
lature.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Wm. J. Fanning

Wm. J. Fanning
Assistant

WJF:GO

APPROVED MAR 7, 1941

Gerrard B. Mann

ATTORNEY GENERAL OF TEXAS

